

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Petition of the SBC ILECs for a Declaratory
Ruling

WC Docket No. 05-276

VarTec Telecom, Inc. Petition for
Declaratory Ruling

Declaration of David Flanary

1. I am an Executive Vice President of UniPoint Enhanced Services, Inc., d/b/a PointOne. In that role, I focus on marketing, sales, and customer care. I am principally responsible for consummating the company's major customer contracts.
2. PointOne offers a number of different enhanced communications services that are described in greater detail in the Declaration of Sam Shiffman. Customers who purchase these services are connected to PointOne's Advanced Internet Protocol Communications Network (AIPCN), through which all customers obtain access to all advanced IP applications available across the network and applicable to the network elements they purchase.
3. PointOne serves a variety of different customer types, including application service providers (ASPs), telecommunications carriers, business/enterprise customers, and a small number of non-PSTN-based retail customers, which collectively access PointOne's network in a variety of different methods including broad and narrow band TDM and IP interfaces. PointOne does not require its business customers to

purchase applications, services, and network elements pursuant to any published rates or system of obligations. Each and every customer is able to negotiate the terms and conditions of its individual contract, and most of PointOne's business is the result of individually negotiated contracts. First, the core business terms, including particular service offerings and negotiated pricing, are negotiated among business people from PointOne and a potential customer. The substantive agreement is then reduced to a negotiated contract in negotiations that sometimes start from a form contract drafted by PointOne and sometimes start from one drafted by the customer. The substantive business terms, the legal "boilerplate," and the pricing are all generally subject to negotiation at the customer's request


4. Our contract with VarTec Telecom, Inc. is an excellent example of an individually negotiated agreement. In order to meet this customer's particular needs, PointOne created a new product, Variable Rate Private Line, and structured a unique business relationship around it. To my knowledge, no one else in the industry offers the same product, and it was the first of its kind when we created the terms and conditions of this product for VarTec.

5. Because PointOne does not require its customers to purchase from a defined schedule of rates, terms and conditions, sometimes negotiations fall through and a deal cannot be consummated because PointOne and a potential customer cannot reach agreement on price or another representative term. For instance, a current customer once approached us seeking to increase the products and services that we had been providing them, as we had been particularly responsive in meeting their individualized needs. But the customer required a price point based on a cost structure that did not permit PointOne

to offer the services in an economically viable manner. Given this barrier, we were not able to negotiate a contract with mutually acceptable terms and conditions for the additional services the customer was seeking to purchase.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on November 10, 2005



David Flanary